



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Patel v Muschette, 2023 ONLTB 55058

Date: 2023-08-11

File Number: LTB-L-009597-22

In the matter of: Basement, 6 Rangeley Drive
Toronto ON M1B5C1

Between: Bhupendra Patel Landlord
Jayshree Patel

And

Deon Marie Muschette Tenant

Bhupendra Patel and Jayshree Patel (the 'Landlord') applied for an order to terminate the tenancy and evict Deon Marie Muschette (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 3, 2022.

The Landlord Bhupendra Patel(BP), Landlord's daughter Shatel Patel (SP), Landlord's representative Han Hao(HH), and the Tenant attended the hearing.

Determinations:

1. By way of background, the residential unit is a basement unit, and the tenancy commenced on April 01, 2015.
2. The Tenant still resides in the rental unit and the monthly lawful rent is \$730.00.
3. On February 16, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022. The Landlords filed this application on March 7, 2022.
4. The Landlords provided the Tenant with the affidavit required by section 72(1.1) of the Act.

Compensation:

5. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the Tenant no later than the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is January 1, 2021.
6. On May 16, 2022, the Landlord gave the Tenant a money order of \$730.00, which is equal to one month's rent. The Landlord testified that the Tenant returned the compensation

money order of \$730.00 to him on June 05, 2022 when the Tenant came to pay June 2022's rent.

7. The Tenant testified that she did not receive a bank draft from the Landlord and denied returning it to the Landlord on June 5, 2022. The Tenant asserts that she visited the Landlord's residence on June 4, 2022, to pay for June 2022's rent, not June 5, 2022, as the Landlord claimed.
8. After reviewing the evidence, based on the balance of probabilities, I am satisfied that the Landlord paid the Tenant compensation equal to one month's rent on May 16, 2022, and thus satisfied sections 84.1 and 55.1 of the Act. The Landlord's testimony was detailed and consistent. The fact that the Tenant chose to return the money order to the Landlord cannot reasonably result in a finding that the Landlord failed to provide the payment. However, as the payment was not resent after the Tenant rejected it, I will order that the Landlord pay it.

Good Faith

Landlord's Testimony

9. SP testified that her father retired on July 17, 2022 and is interested in downsizing to this rental unit. The unit has three bedrooms, a one-car driveway/garage, and is approximately 1600 square feet. SP emphasized that downsizing is practical and more cost-effective, as her parents' current home on 3 Birrell Avenue in Toronto is larger, with four bedrooms and a three-car driveway/garage and takes up about 2000 square feet.
10. The Landlord testified that the first N12 notice, dated February 16, 2022, given to the Tenant on February 18, 2022, was for downsizing. SP testified that the Landlord reached a firm agreement with a purchaser on March 21, 2022, and the purchaser required a vacant property by May 31, 2023. Therefore, the Landlord, on March 30, 2023, gave the Tenant a new N12 notice for purchaser use with a termination date of May 31, 2022. The Landlord claims that the Tenant refused to vacate the unit, and the Landlord incurred thousands of dollars in losses. Consequently, they have decided to reinstate the Landlord's own use N12 notice and sell their current home.

Tenant's Testimony

11. The Tenant claims that the Landlord gave the N12 notice to her in bad faith due to the Landlord's past attempts to increase the rent above the guideline and his usage of N11 and N12 notices.
12. The Tenant testified that on December 26, 2020, at 2:11 PM, when the Landlord texted her that the rent would increase by \$30.00 monthly and an additional \$150 for utilities starting in January 2021. The Tenant testified that she refused to pay more than the allowed 1.2% rent increase without an N1 notice. The Landlord threatened eviction, and evidence was provided through a text message exchange. The Tenant testified that the Landlord presented an N11 form to the Tenant for her to sign, but she declined. She provided a copy of the form signed by the Landlord with a termination date of March 08, 2021, as evidence.

13. The Tenant testified that on February 05, 2022, at 11:40 AM, the Landlord text messaged her that he would be listing the rental unit on February 09 for sale. On February 7, 2022, the Landlord agent posted the "for sale sign" on the property's front lawn and listed it on Google. On February 18, 2022, the Landlord gave an N12 notice to the Tenant for the Landlord's own use with the termination date of May 31, 2022. On March 30, 2023, the Landlord gave the Tenant a new N12 notice for purchaser use with a May 31, 2022, termination date.

Analysis:

14. Section 48(1) of the Residential Tenancies Act, 2006 (the 'Act') provides that a landlord may give notice of termination "... if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by . . . the landlord".
15. The leading decision concerning applications for termination of a tenancy for landlord's own use is the Divisional Court decision of *Beljinac v. Salter* (June 15, 2001), Toronto Docket No. 715/00, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.) Re: TSL-21378. The Court found that the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal.
16. Further, the Court found in *Fava v Harrison*, 2014 ONSC 3352, that the landlord's motive for moving is mostly irrelevant but Board can consider the "conduct and motives of Landlord" to draw inferences of whether the unit is required in good faith.
17. While I accept that there are currently difficulties in the relationship between the Landlords and the Tenant, I am satisfied on a balance of probabilities that the Landlord in good faith intends to downsize and occupy the rental unit for residential purposes. The Landlord's plan entails selling their current property and relocating to this rental unit. The Landlord's decision to reinstate the N12 for Landlord's own use after serving the Tenants an N12 notice for the purchaser's personal use does not necessarily indicate bad faith. The Landlord evaluated all available options after losing money due to the sale falling through and made the best decision according to their judgment. While it may seem unusual, there is no reason to suspect any bad faith on their part.
18. I find that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation by their daughter for a period of at least one year.

Subsection 83(3)(c): Mandatory Refusal of the Application

19. The Tenant argued that the reason the Landlords' application is brought is that the Tenant attempted to secure or enforce her legal rights by refusing to agree to an illegal rent increase and submits that, in such circumstances, subsection 83(3)(c) of the Act requires that the Board must refuse to grant eviction.
20. Paragraph 83(3)(c) of the Act provides:

83 (3) *Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,*

...

(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

21. The Tenant testified that there was a request for an above Guideline increase of rent to address an increase in the rent and utilities for the basement unit. The Landlord testified that the request was made in December 2020 and that when the Tenant advised him that the increase was not permitted under the Act, he did not pursue the issue again and an increase in the rent was not made.
22. I am not persuaded that an improper rent increase request, with a denial by the Tenant, automatically leads to a finding that the Landlord's application was retaliation or the motivation for the application. The discussion of the rent increase occurred in December 2020, and the Landlord served the N12 notice in February 2022 after he had decided to retire in July 2022.
23. On the evidence before me, I find that the request by the Landlord for an increase in rent in December 2020, and the Tenant's refusal to pay the increase, was not the reason for the Landlord's application as the parties' relationship continued on good terms until the N12 notice was served. I find that the timing of the service of the N12 notice is consistent with the evidence of the Landlord, and his desire to downsize.
24. I find that the Tenant failed to meet the onus to show that the reason for the termination was the attempt to secure or enforce her legal rights.

Section 83(1) Considerations

25. I turned my mind to the circumstances of both the Landlord and the Tenant to determine an appropriate termination date for the tenancy.
26. The Landlord requested that the tenancy between the Landlord and the Tenant be terminated by standard order. The Tenant requested additional to vacate the unit.
27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act, to give the Tenant sufficient time to find alternative housing.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2023.
2. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
3. If the unit is not vacated on or before September 30, 2023, then starting October 01, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after October 01, 2023.

August 11, 2023

Date Issued

Percy Laryea

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 2, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.